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UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

A.M., by and through his)	
parents, R.M. and A.M.,)	
)	
Plaintiffs)	
)	
vs.)	
)	
FAIRBANKS NORTH STAR)	
BOROUGH SCHOOL DISTRICT,)	
)	
Defendant)	Case No. 3:05-cv-0179 (TMB)
)	

DEFENDANT'S OPPOSITION TO MOTION TO STRIKE
CROSS-MOTION FOR SUMMARY JUDGMENT

Defendant Fairbanks North Star Borough School District (“FSD”), by and through its attorneys, Jermain, Dunnagan & Owens, P.C., hereby submits this memorandum in opposition to plaintiffs’ Motion to Strike Defendant’s Cross-Motion for Summary Judgment. This Motion to Strike is supported solely by the two-page motion submitted by plaintiffs and is based solely on the November 1, 2005 Order from Chambers that set the briefing schedule in this matter. Plaintiffs assert that this Order “did not provide for any other substantive motions to be filed with the court.” However, this Order did not preclude other motions either.

In the parties’ Scheduling and Planning Conference Report, the parties requested a scheduling conference to confirm the proper procedure in this matter and the applicability of LR

16.3. Docket 7. After the conference, the court issued the November 1 Order setting the briefing schedule. Docket 12. This Order simply provides that plaintiff shall file an opening brief, defendant shall file a response brief, and plaintiff may file a reply brief. There is no restriction or limitation as to the type of brief either party may file.

Although defendant expected that plaintiffs would file an opening brief styled as a typical appeal brief, in keeping with LR 16.3, plaintiffs instead filed a Motion for Summary Judgment and Judgment on the Pleadings. Since plaintiff elected to utilize motion practice under Rule 56 FRCP rather than an administrative appeal brief under LR 16.3, defendant elected to utilize the same motion practice selected by plaintiff and filed a cross-motion in response. In fact, the use of cross-motions for summary judgment in IDEA appeals is a common practice in the Ninth Circuit, as reflected in the following cases: *M.L. v. Federal Way School District*, 394 F.3d 634 (2005); *Ms. S. v. Vashon Island School District*, 337 F.3d 1115 (2003); *Z.A. v. San Bruno Park School District*, 165 F.3d 1273 (1999); and *Capistrano Unified School District v. Wartenberg*, 59 F.3d 884 (1995).

Therefore, since use of cross-motions for summary judgment is an accepted manner of submitting IDEA appeals to the court and since plaintiff elected to utilize this type of motion practice rather than the customary administrative appeal format, plaintiff should not be heard to complain about defendant's filing of a Cross-Motion for Summary Judgment in this matter.

For these reasons, defendant respectfully requests this court to deny plaintiffs' Motion to Strike Defendant's Cross-Motion for Summary Judgment.

Dated in Anchorage Alaska this 17th day of April 2006.

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Certificate of Service

I hereby certify that on April 17, 2006, a copy
of the foregoing Defendant's Opposition to Motion
to Strike Cross-Motion for Summary Judgment
was served electronically on

Sonja D. Kerr (skerr@dlcak.org)

s/ Bradley D. Owens
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